

89. As with *MSG*, Liberty officials attempted to use personal relationships with corporate officials of *Court TV* to obtain this programming. Liberty approached Steven Brill, the President of *Court TV*. First, Brill told Liberty's President that he would sell rights to transmit the network to Liberty. Brill then called back and told Liberty it could not buy *Court TV* because of Time Warner's exercise of an exclusive right. Brill offered his opinion that exercise of this exclusive right in such circumstances was "a blatant violation of the United States antitrust laws."

90. Time Warner's abuse of its vertically integrated position as both owner of *Court TV* and MVPD monopolist was the paradigm of a notorious exclusionary tactic well recognized by the Congress. In 1992, Congress enacted a specific provision designed to thwart this practice as part of the 1992 Cable Act. The 1992 Act and more specifically 47 U.S.C. § 548 (c)(2)(D), which by its terms supplemented but did not supplant the antitrust laws, made presumptively unlawful:

exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable operator and a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest.

Liberty petitioned the FCC pursuant to this provision of law. After a lengthy and costly process in which many potential subscribers were lost, and Liberty's credibility impugned, the FCC invalidated Time Warner's exclusionary contract with *Court TV* on June 1, 1994 and stated:

In this situation allowing exclusivity for *Court TV*, at best, would appear to simply maintain the non-competitive status quo in Manhattan. Thus, we believe that the proposed exclusivity will limit Liberty's ability to develop as an effective competitor, and will also limit the ability of other potential competitors to enter this market. The record reflects that *Court TV* is popular programming. Time Warner's advertising emphasizing its exclusive ability to carry *Court TV* demonstrates that Liberty's ability to compete in Manhattan is affected. Liberty contends specifically that denial

of access to *Court TV* limits its ability to secure contracts for multichannel video programming distribution and to compete effectively against Time Warner. We believe that denial of access to popular programming like *Court TV* inhibits Liberty's ability to develop, and thus restrains competition in this particular local market.

In the Matter of Time Warner Cable Petition for Public Interest Determination under 47 C.F.R. §76.1002(c)(4) Relating to Exclusive Distribution of Courtroom Television, Memorandum Opinion and Order, CSR-4231-P, released June 1, 1994 at ¶37 (footnotes omitted) (emphasis added).

91. After well over two years of delay, Liberty began to air *Court TV* on July 4, 1994.

New York One News

92. Time Warner is part owner of the *New York One News Service* ("NYI"), a local New York City news channel which it refuses to sell to Liberty. Time Warner's interest in NYI is "attributable" under the vertical integration provisions of the 1992 Cable Act, which Liberty used to obtain *Court TV*. However, this provision only makes exclusive arrangements for "satellite" delivered cable programming presumptively illegal. Not coincidentally, NYI is delivered through Time Warner's wire network. As a consequence, Liberty's exclusive legal recourse is to the antitrust laws.

93. Time Warner's refusal to sell NYI to Liberty is part of its exclusionary campaign against Liberty. Time Warner has freely sold NYI to its "competitor" and co-conspirator MSOs in the region, including Cablevision Bronx, Cablevision Brooklyn, BQ Cable, TCI Brookhaven, Cablevision Riverhead, V-Cable, TKR Tri System, Comcast Meadowlands, Storer Eatontown, Storer Hightstown, Storer Plainfield, Storer Point Pleasant, Storer Port Murray, Monmouth, Riverview, Suburban, Adelphia, U.S. Cable Paterson, Vision Cable, Sammons, TKR Rockland/Ramapo, TKR Warwick, TCI Westchester, U.S. Cablevision Colony, Comcast-Danbury.

94. After the FCC forced Time Warner to allow Liberty to purchase *Court TV*, Time Warner re-focused its anti-Liberty advertising campaign on its *NY1* exclusive.

fX

95. As discussed above, Liberty's introduction of some 18 major non-broadcast networks into the Manhattan and Queens MVPD markets during the last four years has, in several instances, forced Time Warner to respond and also offer the service. This occurred after Liberty introduced the *TV Food Network*, the *Sci-Fi Channel* and the *History Channel*. Similarly, after Liberty provided *Bravo* and *SportsChannel* in its basic tier, Time Warner was forced to stop charging premiums for these channels. With respect to *TV Japan*, *Bloomberg Information TV* and *United Nations TV*, Time Warner belatedly introduced truncated forms of the service offered by Liberty.

96. In each case Liberty's innovative program offerings have benefited all of Time Warner's remaining subscribers in the MVPD markets. This was a paradigm of competition, a model Time Warner could not countenance.

97. Liberty attempted to repeat this innovative pattern with *fX*, a new entertainment and news non-broadcast network which originates from a studio in the Chelsea section of Manhattan. In June 1994, *fX* was "launched" with 18 million subscribers, the largest initial subscriber base of any non-broadcast network to that date. However, not one of these 18 million subscribers resided in Staten Island, Brooklyn, Queens or Manhattan, where *fX* originates. This was because co-conspirator TCI brokered an arrangement which prevents Liberty from buying *fX*. This makes it unnecessary for Time Warner to offer this innovative but costly (to MVPDs) programming service.

98. In 1994 *Fox*, then the sole owner of *fX* was coerced by TCI into granting not only TCI but every franchised Cable TV system in the United States the exclusive right to distribute *fX* within its service area. Under this agreement *fX* can be and is sold to any *MSO* "competitor" of TCI. However, *fX* cannot be sold to any SMATV, MMDS, DBS or other competitor of franchised Cable TV systems. Such franchised Cable TV systems are monopolists in virtually every market in which they operate.

99. The leverage which TCI used to extract this unprecedented and astoundingly anticompetitive agreement inheres in TCI's power as the largest *MSO* in the country. A deal with TCI alone gives *fX* far more subscribers than all of the alternative MVPDs in the nation combined.

100. TCI also paid *Fox* what was in essence an exclusionary premium for *fX*. The initial rate per subscriber for the untested *fX* was \$.25 per month, which far exceeded the initial price of any other new non-broadcast network. For example, when launching their popular *Sci-Fi Network*, Viacom and MCA offered the service to MVPDs for free in the first year, for \$.05 per subscriber per month in the second year and for \$.06 in the third year.

101. At the very high price of \$.25, Time Warner, whose rates were regulated in 1994, had absolutely no reason to offer *fX* unless forced to by Liberty. Under the exclusionary arrangement brokered by TCI for Time Warner and its other *MSO* "competitors," Time Warner was thus relieved of the rigors of competition. All New Yorkers were and are being deprived of a new and innovative source of news and entertainment and exclusive sports programming. Liberty has constantly and consistently sought to purchase *fX* to no avail.

Time Warner Has Selectively Priced and Sold Its
Video Services in an Exclusionary, Predatory and Discriminatory Manner

102. Since it began operating, Liberty has always charged substantially lower prices than Time Warner for substantially the same but a somewhat broader array of commercial non-broadcast video programming. Liberty has also provided signal quality, less prone to disruption, and superior installation, repair and customer service. In response, Time Warner has selectively targeted buildings which have considered or are considering a contract with Liberty and paid them bribes, gratuities, and illegal bulk discounts. These cash incentives did not completely eliminate the price gap between Liberty and Time Warner. However, when utilized in combination with Time Warner's other exclusionary practices, these payoffs seriously impeded the progress of Liberty's entry into the markets and reduced the number of subscribers Liberty otherwise would have obtained.

Bulk Discounts

103. The 1992 Cable Act recognized that the selective use of discounts by entrenched MSOs has impeded and continues to impede the development of effective competition. Accordingly, Congress prohibited the practice and stated:

UNIFORM RATE STRUCTURE REQUIRED -- A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system.

47 U.S.C. 543(d). The Franchise Agreements between Time Warner and the City of New York also prohibited Time Warner from providing bulk rates on a selective basis. *Cable Television Franchise Agreement for the Borough of Manhattan between the City of New York and Manhattan Cable Television, Inc.*, June 28, 1990 (the "Franchise Agreement").

104. Time Warner violated the 1992 Cable Act, FCC regulations (47 C.F.R. § 76.984) and its Franchise Agreements by selectively and tactically offering bulk discounts only to buildings negotiating with or being served by Liberty.

105. During most of 1992, Time Warner offered bulk rates to buildings negotiating with Liberty without DOITT's permission and in defiance of the Franchise Agreements between Time Warner and New York City.

106. A co-conspirator official of DOITT (then "DTE") acting in excess of and derogation of his authority, refused to take any action.

107. On October 10, 1992, Time Warner sought DOITT's permission to offer a 25% discount on cable rates to buildings with 20 or more units. Without public hearing or notification, DOITT granted Time Warner permission to offer bulk service discounts to buildings with 15 or more units on November 18, 1992, with the proviso that service be purchased for every unit in buildings receiving the discount.

108. Time Warner utilized the bulk discounts in an exclusionary, discriminatory and predatory manner.

109. Time Warner did not make the discounts available to all buildings with 15 or more units, as required by the 1992 Cable Act and the Franchise Agreement. These discounts were only made available to buildings which were served by Liberty or were negotiating with Liberty. Virtually all of the extant descriptions of Time Warner bulk rates in the period 1992 through February 1996 are in the format of Time Warner responses to Liberty (by name) or anti-Liberty advertisements.

Price, Predation, Exclusion
and Discrimination with Hotels

110. Throughout 1995 and early 1996, Time Warner focused its campaign of exclusionary, discriminatory and predatory pricing in the hotel sector of the markets.

111. In numerous instances, Time Warner offered special prices to only those hotels which Time Warner believed were negotiating with Liberty or were already serviced by Liberty. The prices quoted by Time Warner were not only discriminatory, but also below the average variable and marginal costs incurred by Time Warner. Time Warner priced below such measures of cost, even considering the discriminatorily lower prices afforded to Time Warner by programmers such as co-conspirator, Cablevision, through its Rainbow Programming subsidiary. Liberty has counter-bid prices sufficiently low to maintain its existing hotel accounts against Time Warner's predatory onslaught, but Time Warner's tactics have seriously retarded Liberty's progress in the hotel sector.

112. These acts of exclusion and predation, as with all of Time Warner's anticompetitive acts, are intended to be witnessed by the dual audience of buildings in the metropolitan area and entities which would challenge monopoly cable operators in the rest of the United States. New York City hotels are extremely crucial with regard to this national audience, because they temporarily house business people and important opinion leaders and decisionmakers. These leaders can potentially return to their home cities with the message that an upstart video provider is challenging Time Warner and lay the public opinion foundation for Liberty or another alternative MVPDs to challenge the Cable TV monopolists in their own markets. Throughout the period of this complaint, Liberty was in active and well-publicized negotiations with regional Bell Operating Companies to joint venture and compete with

entrenched cable monopolists in other regions of the country. One important purpose of the predatory campaign by Time Warner and co-conspirators, was in the words of Time Warner's marketing department, to "do whatever it takes to stop Liberty" and to inhibit such ventures. Time Warner substantially achieved this goal.

**Time Warner Paid Bribes and "Perks" to Buildings
Which Were Negotiating With Liberty**

113. Time Warner also systematically paid "perks," bribes and "under the table" consideration to building owners negotiating with Liberty.

Stuyvesant Town/Peter Cooper Village

114. Stuyvesant Town and Peter Cooper Village are related and connected complexes in Manhattan (collectively referred to as "Stuyvesant") containing 11,184 rental apartments. Stuyvesant, owned by co-conspirator Met Life, is one of the largest residential complexes in the United States.

115. A majority of Stuyvesant's residents subscribe to Time Warner cable services at a basic rate of approximately \$30 per month. During the period 1991 to 1996, hundreds of tenants of Stuyvesant contacted Liberty about obtaining video service. Liberty was also approached on numerous occasions by the Stuyvesant Tenants Association representing thousands of tenants.

116. In or about 1991, Met Life and tenants groups within Stuyvesant began negotiations with Liberty. If allowed to compete, Liberty would have provided head-to-head competition for Time Warner, with each Stuyvesant resident exercising a choice between the competing video services.

117. Liberty offered Stuyvesant residents a basic tier of services at approximately half Time Warner's price, *i.e.*, \$15 per month. At Met Life's request, Liberty also agreed to repair and

upgrade Stuyvesant's intercom door answering system, free of charge. Thereafter, Met Life asked Liberty to install a new intercom system, Liberty agreed. In sum, Liberty's offer, which Met Life verbally accepted, included a new intercom system for the building owners and the opportunity for building residents to obtain cable services at roughly half Time Warner's price. Under this proposal, Liberty was not guaranteed a single subscriber, but only the right to compete.

118. Time Warner and Met Life then combined and conspired to prevent Stuyvesant residents from securing the right to choose between competing multichannel video services. They also agreed that Time Warner would provide an intercom system valued at approximately \$1 million, but the *quid pro quo* required MetLife to exclude Liberty from the complex and grant Time Warner exclusive access to the building conduits which house cable wires. Met Life then terminated its negotiations with Liberty, without allowing it to match whatever additional consideration Time Warner provided Met Life in return for ~~ex~~cluding Liberty.

119. Because Stuyvesant's existing intercom involved a NYNEX system, NYNEX retained an independent telecommunications expert to analyze the offers made to Met Life by Time Warner and Liberty. The expert (now retained by Time Warner) concluded that:

- Met Life granted Time Warner exclusive access to the residents of Stuyvesant and to building conduit in return for an intercom system.
- Liberty's proposal involved lower prices for Stuyvesant residents offered on a non-exclusive basis.
- "The decision to retain those customers is a strategic decision, not a tactical one There is no short term profit motive involved in the Time Warner proposal."
- "Liberty Cable was very aggressive in their pursuit of this opportunity, their loss is evidence of Time Warner's resolve to retain market share in the area."

The Stuyvesant residents and Tenants Association complained to various governmental officials about the exclusion of Liberty. In response, the Antitrust Bureau of the New York State Attorney General conducted a formal investigation of the exclusionary agreement between Met Life and Time Warner. On August 16, 1995, in response to the pressure exerted by this antitrust investigation, Met Life notified the New York Councilman who represents Stuyvesant residents that Met Life's legal department had now concluded that Liberty must be allowed to provide cable service to Stuyvesant residents in competition with Time Warner. Specifically, Met Life invoked the provisions of New York Executive Law Section 828 as mandating that Liberty be given the right to compete.

120. However, Met Life continued to block Liberty from serving Stuyvesant residents. First, it delayed providing conduit and construction diagrams necessary for Liberty to construct its system. Then it demanded that Liberty agree to pay Met Life 15% of its gross revenues in return for access. This demand was made despite the fact that Section 828, the statute invoked by Met Life in August 1995 as mandating access for Liberty, prohibits any such payments to Met Life. Although, as stated, it is known that Time Warner bribed Met Life to exclude Liberty with an installation valued at approximately \$1 million.

121. Met Life thereafter renounced its August 1995 position that Section 828 mandated access to Stuyvesant for Liberty. It also denied that its legal department had ever reached this conclusion despite clear documentary evidence to the contrary.

122. As of March 8, 1996 when a majority interest in Liberty was sold, it had not been permitted to begin construction at Stuyvesant and therefore had not obtained a single subscriber despite the manifest desire of thousands of Stuyvesant residents to obtain Liberty video service.

123. In addition to the million dollar plus bribe and exclusionary premium paid to Met Life by Time Warner for preventing Liberty from competing at Stuyvesant, Time Warner has systematically paid such premiums and bribes to buildings negotiating with Liberty. For example, Time Warner provided free installation, six months free video service and premium channels at half price in three buildings where Liberty was permitted to compete head-to-head with Time Warner.

124. In two other buildings where Liberty and Time Warner were competing head-to-head, Time Warner provided free installation and free premium channels valued at slightly in excess of \$100 per apartment. When residents of other buildings asked Time Warner for the same offer, they were told that this was available only in these buildings because of Liberty's presence.

125. In another building negotiating with Liberty, Time Warner promised to pay the building more than \$50,000 in legal fees already incurred in its negotiations with Liberty and in terminating such negotiations. It also illegally granted the building a bulk rate discount well in advance of the November 1992 decision by DOITT which purported to authorize certain bulk discounts. Time Warner also waived the "tap side" access requirement, as more fully detailed below.

126. In still another instance of special consideration for Liberty's exclusion, Time Warner promised and delivered a complete construction upgrade of a building's video system in return for a promise not to allow Liberty to service the building. This exclusionary bribe was brokered by a partner of one of the law firms which represents Time Warner and who serves on the board of directors of the building. Referring to this incident, this lawyer remarked to Liberty's President that "the earliest Christians get the hungriest lions." This dark biblical humor

was in marked contrast to the tactic employed by another partner of this law firm who served on the board of a Park Avenue cooperative apartment building. This lawyer physically threatened another board member who proposed that Liberty be allowed to service the building. The lawyer who made the threat was murdered soon thereafter, a tragedy unrelated to the facts of this case. The building is now served by Liberty.

127. Time Warner and its co-conspirators systematically and pervasively deployed influential lawyers and business people to threaten and intimidate prospective Liberty customers. As noted above, TCI and Cablevision embraced Time Warner's goal of destroying Liberty in this region and eliminating the possibility that Liberty or a similar alternative MVPD would challenge their monopoly positions elsewhere.

128. In the fall of 1994, Liberty agreed in principle to deliver video service to more than 100 apartments in The Normandy, a building located on Riverside Drive in Manhattan. The contract was fully negotiated and merely awaited *pro forma* board approval on February 2, 1995.

129. On February 2, 1995, Jerome Kern, one of TCI's principal outside counsel and the holder of TCI stock valued at \$24.8 million, intervened. Stating that he "represented the cable industry" Kern warned that he would not allow Liberty to serve any residents of the building in competition with Time Warner. The building abruptly withdrew its offer. A group of building residents mounted a letter writing campaign, disclosing Kern's ties to TCI. By early 1996, this campaign resulted in a contract between Liberty and The Normandy. However, this delay precluded Liberty from obtaining a single subscriber at The Normandy as of March 8, 1996, when a majority interest in Liberty was sold.

Time Warner Widely Disseminates Intentionally False Advertising
and False Claims About Liberty

130. Time Warner has widely disseminated intentionally false information about Liberty. It has done this in the guise of "fact sheets" and other written material distributed to buildings negotiating with Liberty, in advertising and in a widely aired "consumer advisory" which masqueraded as a public service message from a consumer protection agency.

Consumer Advisory

131. In March and April 1993, Time Warner continuously ran an anti-Liberty advertisement on *CNN* and *CNBC*. It also broadcast this ad at least hourly on NY1. The ad, which was disguised and titled "Consumer Advisory " stated:

Lately you may have heard some noise from a company called Liberty Cable, which isn't a cable television company at all, but a wireless transmission service operated by a real estate company. Despite their promises, they deliver less programming using an unreliable technology we abandoned years ago. Time Warner Cable and Paragon Cable remain the only franchised cable operators in Manhattan, giving you the consumer protection you are entitled to. There's been enough snow in New York lately . . . you don't need more on your TV screen . . .

132. Of this fake "Consumer Advisory," the New York City Department of Consumer Affairs opined on May 25, 1993:

Such ads have a clear capacity to mislead consumers into believing that the statements and representations contained therein have the "sponsorship, approval, . . . affiliation or connection" with some governmental agency at the federal, state or local level. Consumers have come to associate terms such as "Consumer Advisory" or "Consumer Alert" with pronouncements of the FTC, FCC, Department of Telecommunications and Energy, Department of Consumer Affairs, or other regulatory agencies. The particular commercial referred to by Liberty has a dangerous feature of being read as a scroll so that the clear identity of the author is not known until the end of the commercial

Time Warner's False and Disparaging Claims About Liberty's
Program Offerings and Technology

133. Time Warner persistently made intentionally false and disparaging statements widely disseminated in its printed materials and advertisements. These generally, though not exclusively, fall into two broad categories: Liberty's program offerings and Liberty's technology and reliability.

Time Warner Falsely Advertises About Liberty's Program Offerings

134. In addition to focusing its negative advertising campaigns on the cable networks which Time Warner and co-conspirators caused to be withheld from Liberty (at various times, *HBO*, *Cinemax*, *MSG*, *Court TV*, *fX* and *NYI*), Time Warner intentionally and falsely advertised that Liberty does not offer programming which it does in fact, offer.

135. Time Warner advertised that Liberty does not carry the "Cartoon Network," when, in fact, it has done so since this network's inception.

136. Time Warner advertised that Liberty does not carry the TV Food Network. Liberty has carried this network since the network began broadcasting.

137. Time Warner widely disseminated false written claims that Liberty does not offer the *NewSport* channel. Liberty does offer *NewSport* but Time Warner does not. Time Warner widely disseminated false written claims that Liberty does not offer the *SportsChannel* network. Liberty provided *SportsChannel* in its basic tiers of service years before Time Warner.

138. Time Warner widely disseminated false printed matter claiming that Liberty does not offer the *ESPN2* network. Liberty has provided *ESPN2* in its basic tier from the moment *ESPN2* began transmission.

139. Time Warner has mailed and distributed tens of thousands of letters, brochures and so-called "Fact Sheets" which intentionally understate the number of channels provided by Liberty to its customers. The mailings have also intentionally conveyed the false impression that Liberty does not offer pay-per-view and/or that Liberty offers only a single pay-per-view channel. In fact Liberty offered pay-per-view selections well before Time Warner.

140. Liberty consistently informed Time Warner that it was disseminating false claims about Liberty. Time Warner has never made any effort to correct these false assertions and in fact has restated the falsehoods after being so informed.

Time Warner Falsely Advertises That Liberty Utilizes An Inferior
Technology Which Time Warner Long Ago Abandoned

141. Time Warner's advertising persistently asserts that Liberty utilizes an inferior technology which Time Warner long ago abandoned. Liberty received the first 18 Ghz license issued by the FCC in 1991. Its equipment is new and state-of-the-art. While making these claims, Time Warner utilized microwave transmission in 18⁺ cable systems which it owns and operates in other locales. However, Time Warner's microwave equipment is older and less technologically advanced than Liberty's.

142. Liberty has, in fact, consistently supplied its subscribers with a system more technologically advanced than Time Warner's. Liberty introduced pay-per-view prior to Time Warner. Liberty also introduced advanced addressable converter boxes, on-screen time and channel display and multichannel video service without converters, features which Time Warner introduced well after Liberty or, in certain instances, not at all.

143. Liberty's signal quality is both objectively and subjectively superior to Time Warner's. One reason for Liberty's superior signal quality inheres in the fact that Time Warner's

signal has to be constantly amplified because of the great distance it travels over coaxial cable. In most cases Liberty's signal needs no amplification, and often has to be reduced because of its strength. However, when Liberty's signal needs to be amplified, the boost required is modest in comparison to the constant need to amplify Time Warner's signal.

144. Time Warner's persistent assertion that Liberty's microwave transmission is more prone to disruption is similarly false. Indeed the physical wire utilized by Time Warner is far more prone to invasion and disruption by water, rodents and physical tampering. The integrity and stability of the wire is also prone to disruption by the proximity of New York subways. Time Warner's wire system has proved far less reliable than Liberty's system. During the New York City blizzard in January 1996, more than 100,000 Time Warner subscribers lost service for significant periods of time. Liberty subscribers did not experience any disruption of their video service.

145. From the moment Liberty became a full ~~head-to-head~~ competitor, Time Warner has consistently told actual and prospective Liberty customers that it was about to upgrade the New York systems into so-called "Full Service Interactive Networks" along the model of Time Warner's system in Orlando, Florida. This "vaporware" claim is false, deceptive and anticompetitive in several respects.

146. Time Warner was deceptively telling New Yorkers that it was about to upgrade Time Warner's New York Cable TV systems into Full Service Networks years before Time Warner was even operating such a system in Orlando.

147. Time Warner also made this claim years before it had any concrete plans to upgrade the New York System, and upon information and belief, Time Warner still has no such plan.

148. Time Warner's claims and advertisements about the Orlando system, a system which is a well known joke in the Cable TV industry, assert that if the customer opts for Liberty service, it will be technologically "left behind." In fact, Time Warner's franchise agreement with New York City requires Time Warner to promptly reinstall any customer within its service area, in the event that Time Warner ever actually becomes technologically advanced. Time Warner's New York systems have historically been among the most primitive, so technologically backward that they render useless many of the "customer friendly" features which the FCC has mandated be built into modern televisions and VCRs

Time Warner Interferes With Liberty's Advertising Campaign

149. In addition to advertising falsely about Liberty, Time Warner and its co-conspirators interfered with Liberty's advertising campaign. Given Time Warner's and Liberty's relative market shares, this advertising is crucial to Liberty's progress.

150. As noted, Time Warner is a media conglomerate. It has persistently refused to accept Liberty's advertising in various media.

151. Time Warner has more specifically refused Liberty's advertising in organs where it disseminates false claims and advertising about Liberty.

152. Time Warner has also combined with co-conspirators to interfere with Liberty's ability to advertise in media which it does not directly control.

153. In 1993, Liberty paid \$45,000 for a license from Turner to use a 30-second segment from the 1979 Film *Network*, starring the late Peter Finch. At Turner's direction, Liberty also obtained permission from the Finch Estate and paid the estate \$7,500.00. In this famous segment, Finch, who portrays a crazed but brilliant TV news commentator, exhorts viewers to turn off their TV sets, go to their windows and scream, "I'm mad as hell and I'm not

going to take it anymore!" The screen then shifts to a city courtyard where people standing on fire escapes respond to Finch's command and scream the suggested "I'm mad," etc. Liberty incorporated this sequence into an advertisement. The purpose and intended consumer "take away" of this advertisement is that cable subscribers should be mad at their monopolist cable operators and opt for the competitive alternative offered by Liberty. Liberty purchased both national and local "spots" for this television advertisement.

154. Shortly after Liberty's ad started airing, Time Warner and its co-conspirators went into action. First, Liberty was sued by Leonard Grodin, an "extra" who appeared in the fire escape sequence. Grodin alleged that due to the nature of the Liberty ad, his theatrical career was jeopardized. He alleged that Time Warner would deprive him of work because of his appearance in the ad. Grodin is an "extra" in a scene with five actors, which lasts seven seconds. At his deposition, Grodin admitted that he met with Time Warner personnel immediately before the deposition.

155. An executive in Turner's licensing department in New York called Liberty's President on September 1, 1993, and said that Ted Turner considered the ad "cable-bashing" and that Liberty would be doing Mr. Turner a personal favor by pulling the ad. Liberty's President responded that Liberty would be pleased to discuss the matter at a meeting with Mr. Turner in New York. The Turner representative called back and said that Mr. Turner "insisted" that the ad be pulled from all channels. Liberty again refused, but reiterated the offer of a meeting with Mr. Turner in New York. Counsel for Turner then called back and stated that Mr. Turner "demands and insists" that the ad be pulled from all networks.

156. Turner-affiliated networks, including *TBS* and *TNT*, refused to run the ad despite the fact that Turner had reviewed the ad (without voicing any objection) and accepted payment for the ad time pursuant to a "firm non-cancelable order."

157. Thereafter, without legal justification, Turner purported to revoke the license for the *Network* footage without returning the \$45,000 previously paid. Turner also contacted ABC's *Good Morning America* and put pressure on its producers not to use the Liberty ad as part of a story on the public's dissatisfaction with cable. ABC aired this segment without deleting the Liberty ad sequence on September 28, 1993.

158. Turner's active participation in Time Warner's interference with Liberty's ad campaigns continued after the *Network* incident. On Sunday, November 13, 1994, Liberty placed a unique four panel wrap-around ad on the covers of more than one million copies of the Sunday *Television* supplement of *The New York Times*. The ad promotes Liberty and spotlights *TCM*, a then new Turner network. *TCM* is carried by Liberty but has not been picked up by Time Warner in New York City. The ad also parodies a recent Time Warner campaign heralding their 1,000,000th customer in New York City by stating "HELP US LIBERATE OUR 1,000,000TH CUSTOMER FROM THE CABLE MONOPOLY. We've already liberated buildings throughout Manhattan, including some of your neighbors. Return this postcard to request better service at better prices -- and get TURNER CLASSIC MOVIES without additional cost."

159. This ad resulted in well over 10,000 consumer responses and one immediate response from Turner. On November 15, 1994, Liberty was called by Turner's office of Special Markets. Turner's representatives complained about the ad. One would think Turner would have been pleased that their new network had been prominently advertised to the entire New York

metropolitan area readership of the Sunday New York Times, but their normal business motivation was overwhelmed by the collective mission to squelch competition. Turner never acknowledged that this exposure might well force Time Warner to buy the channel, in the same manner that many other Liberty programming initiatives had forced Time Warner to respond.

**Time Warner Pays Commercial Bribes to Building
Superintendents to Steer Building Residents to Time Warner**

160. When Time Warner pays a building owner such as Met Life an exclusionary bribe to prevent Liberty from providing a competitive alternative to Stuyvesant residents (as alleged in ¶¶ 112 - 124), such action economically benefits the owner to the detriment of tenants, competition and Liberty. When Time Warner pays bribes to building employees to steer tenants to Time Warner and away from Liberty, the commercial bribe injures the tenants, competition, Liberty and the building owner as well.

161. Time Warner has systematically paid numerous building superintendents commercial bribes in the form of a payment of \$10.00 for every subscriber which the superintendent steers to Time Warner. Time Warner supplements these cash payments with payments of liquor.

162. In addition, Time Warner commercially bribes building superintendents by providing free cable service for the superintendents' apartments. Time Warner does this not only as consideration for steering tenants to Time Warner, but also for another reason. According to Time Warner's *post hoc* rationalization, these commercial bribes compensate buildings for the electrical power which Time Warner systematically converted for more than 25 years.

163. From 1967 until at least 1994 Time Warner and its predecessors systematically converted and pirated the electricity used to power the amplifiers which its Cable TV systems

utilized. This practice continued with the awareness of high level Time Warner officials, including Time Warner's Chairman Gerald Levin. Time Warner is now defending a class action brought on behalf of the thousands of building owners so victimized.

164. Effective in 1994, DOITT specifically required Time Warner to stop stealing electricity and make specific provision to prospectively compensate buildings for the electrical power utilized by Time Warner or to pay utilities directly for this power. In proceedings which preceded DOITT's adoption of this rule in 1994, the co-conspiring DOITT official acknowledged that Time Warner gave building employees free cable service in lieu of paying the buildings the actual value of the electricity Time Warner utilized.

165. However, this official tried to whitewash the illegal acts of Time Warner by characterizing the commercial bribes as "barter-like" transactions. The buildings were unknowingly paying for the converted electricity, whereas the free Cable TV service was given to a building employee.

Time Warner Damaged and Destroyed Liberty's Equipment
and Harassed and Physically Intimidated Liberty Technicians

166. On numerous occasions, Time Warner employees and contractors have intentionally damaged or destroyed Liberty equipment. The vandalism ranges from cutting coaxial cable in a manner which makes it difficult to repair, to ripping junction boxes out of walls and destroying expensive microwave equipment

167. At one building, Paragon employees vandalized distribution equipment on three floors, knocking out service to all subscribers on such floors.

168. At a second building, the Liberty "cable riser" for an entire line of apartments lost power after Time Warner technicians disconnected it.

169. In the midst of a large conversion of Time Warner subscribers to Liberty service in 1994, Time Warner technicians repeatedly disconnected Liberty customers and thereby either terminated their service entirely or switched them back to Time Warner.

170. At another building in 1994, Time Warner technicians disconnected the service of Liberty customers and switched them to Time Warner without their consent.

171. At another building in 1993, technicians from Paragon Cable disconnected the Liberty cables in a stairwell, terminating Liberty service to the entire fifth floor of the building.

172. In 1994 Time Warner vandalized the "pull box" at a New York residence hotel and switched Liberty subscribers to Time Warner service.

173. At another building, Time Warner technicians disconnected Liberty Service to two subscribers, switching one to Time Warner and leaving the other without service.

174. These documented incidents are merely representative of the pattern of violence to property utilized by Time Warner in its campaign of predation against Liberty.

175. Another prong in Time Warner's predatory campaign involved threatened and actual physical violence against Liberty employees.

176. In one of these incidents, a group of Time Warner union contractors surrounded Liberty technicians on the roof of a building, where most tenants were converting to Liberty from Time Warner service. The Time Warner contractors proceeded to menace and threaten to push the Liberty workers off the building. Since Liberty's video signal is delivered via microwave to building rooftops and Time Warner's signal is delivered by cable to basements, there was no reason other than intimidation for Time Warner technicians to be on the building's roof.

177. In another incident, a Time Warner service man arrived at a building managed by the owners of Liberty. He demanded the "right" to inspect and manipulate Liberty equipment,

struck the building superintendent when his demand was rejected and warned that he would return "with help."

178. In another incident, Liberty contractors were verbally and physically intimidated by Time Warner union contractors while installing Liberty service on Roosevelt Island.

Time Warner Attempted to Block the FCC
Approved NYNEX-Liberty Video Dial Tone Trial

179. Time Warner has moved immediately and forcefully to stamp out nascent competition whenever it appears. It did so in 1993 when the FCC approved the plan of NYNEX and Liberty to conduct the first Video Dial Tone ("VDT") trial in the United States. With VDT, a common carrier, such as NYNEX, delivers programming provided by programming customers, such as Liberty, to subscribers over the common carrier's wire and fiber optical VDT platform.

180. VDT was particularly threatening to Time Warner because numerous competing MVPDs can be accommodated and act as programmers in a single VDT system.

181. Soon after the FCC approved this first VDT trial, Time Warner petitioned the FCC to exclude Liberty from participating.

182. After Time Warner's attempt to block competition was denied, Time Warner asked the FCC to delay the trial. This was also denied.

183. Having failed to exclude Liberty and delay the VDT trial, Time Warner reluctantly joined the trial and then gave basic video services away for free and sold premium channels at half Time Warner's normal price.

184. Despite all of these tactics, the vast majority of subscribers participating in the trial chose Liberty service. Because of this, Time Warner filed an objectively baseless and sham

claim with the FCC contending that it had been denied fair access and participation in the NYNEX VDT trial.

**Time Warner Manipulated Access to Wiring
and Conduits to Prevent Liberty from Competing**

185. When Liberty persisted in spite of all of the other predatory and exclusionary tactics employed by Time Warner, the Defendant resorted to manipulating the access to wiring, conduits, moldings, junction boxes, "gem boxes" and other building facilities necessary to deliver video service to the building's tenants ("transmission facilities").

186. Buildings desirous of replacing Time Warner service or giving building residents a choice of competing services typically will not permit a second parallel and redundant transmission facility to be installed to reach each subscriber. Construction of such parallel, redundant facilities often entail core drilling stairwells and other major disruptive construction. These facilities are redundant because two or more competing services can co-exist within each building's existing transmission facility.

187. To prevent competition, Time Warner has claimed ownership and/or exclusive rights of access to transmission facilities which the building itself installed and/or facilities which are owned by such buildings because they are fixtures.

188. In other cases, Time Warner prevented buildings from acquiring transmission facilities which constitute so-called "inside wiring." Pursuant to both federal law and Time Warner's Franchise agreement with New York City, buildings have a right to acquire inside wiring, so as to facilitate a change in MVPDs.

189. In many instances, Time Warner's false assertion of ownership and exclusive access was accompanied by threats of litigation against buildings and/or actual litigation.

190. In certain instances, Time Warner actually filed objectively baseless and frivolous litigation asserting ownership or access to transmission facilities and then failed to actively prosecute the litigation or withdraw these sham claims.

191. In one instance in 1995, Time Warner even asserted ownership of the air under molding it had installed, as a means to prevent Liberty from providing video service to a building.

192. The manipulation of access to building transmission facilities prevented buildings from switching to Liberty service and/or made transitions much more disruptive and costly than necessary.

193. These tactics also had an additional, more important, purpose and effect in Time Warner's campaign to maintain its monopoly. Word quickly spread from building to building that Time Warner would make life miserable for a building considering offering its residents an option between competing video services. A standard procedure for buildings considering Liberty was to call other buildings where Liberty already provided service. They were frequently told about the numerous predatory tactics used by Time Warner against buildings and residents who seek Liberty service. Upon learning about the tactics employed by Time Warner, many of these buildings never started or soon terminated their discussions with Liberty.

**Time Warner Offered to Pay Buildings an Exclusionary Premium
in the Form of a Free Conduit System to Prevent Liberty from Competing**

194. In addition to falsely asserting ownership and/or exclusive access to transmission facilities in existing buildings, Time Warner attempted to lay the foundation for preventing new buildings from offering residents a choice among competing video services.